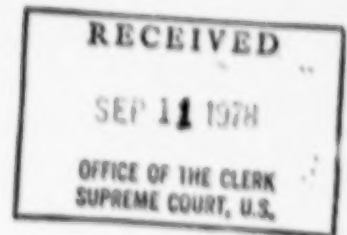


IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1977  
No. 77-1202



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STATE OF MICHIGAN

Petitioner-Appellant,

-vs-

HAROLD W. DORAN

Respondent-Appellee.

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ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF MICHIGAN

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MEMORANDUM SUGGESTING NOOTNESS

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STATE APPELLATE DEFENDER OFFICE

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Dated: September 8, 1978

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Petitioner-Appellant,

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Respondent-Appellee,

ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF MICHIGAN

MEMORANDUM SUGGESTING MOOTNESS

1. On April 17, 1978, Certiorari was granted in the above case. On April 18, 1978, counsel for Respondent Harold Doran attempted to contact Mr. Doran at his last known residence, namely his father's home in Bay City, Michigan.<sup>1</sup> Counsel spoke with Mr. Doran's father William Doran, who informed her that Mr. Doran left his home approximately three days after his release from the Bay County Jail and had not returned. William Doran added that he had no present knowledge of his son's whereabouts.

In the months that followed, counsel for Respondent mounted a diligent search in an attempt to determine if Mr. Doran was still in the state of Michigan. The services of an investigator were employed. Mr. Doran's known associates in the Bay City area were

<sup>1</sup> Upon his release October 4, 1977, by the Michigan Supreme Court, Mr. Doran informed counsel that he would be residing at the home of William Doran - 710 S. Arbor, Bay City, Michigan.

contacted and all professed no knowledge of Mr. Doran's current whereabouts. A check with the Law Enforcement Information Network, as of August 18, 1978, revealed no current entries in any state concerning Mr. Doran beyond his initial arrest in this matter December 18, 1975 (See Affidavit, Appendix A). On September 6, 1978, this attorney again contacted Mr. Doran's father. He again informed her that he had neither seen nor heard from Respondent since her last contact (See Affidavit, Appendix B).

Although the search for Mr. Doran continues, counsel for Respondent believes the repeated failure of her efforts to locate her client demonstrates that there is presently a strong possibility that he is no longer in the State of Michigan. The suggestion of mootness stemming from Mr. Doran's absence prompts his counsel to file this Memorandum.

2. The apparent disappearance of Respondent Harold Doran compels this Court to consider whether this case has any continuing viability as an actual "case or controversy".

This case has been briefed on the merits and scheduled for oral argument October 4, 1978. Counsel for Respondent has, until now, refrained from raising the issue of mootness because she felt constrained to make every reasonable effort to locate her client before basing any jurisdictional attacks upon his apparent disappearance. The continued futility of these efforts has convinced counsel of the likelihood that Mr. Doran is no longer present in Michigan. Thus, despite the stage to which this case has advanced<sup>2</sup>, counsel for Respondent urges that Mr. Doran's apparent absence requires that this Court consider the question of mootness prior to adjudicating the

<sup>2</sup> This Court has not hesitated to address the question of mootness at any stage of a proceeding; even where both parties failed to raise the issue. DeFunis v Odegaard, 416 US 312, 94 S Ct 1704, 40 L Ed 2d 164 (1974); North Carolina v Rice, 404 US 244, 92 S Ct 402, 30 L Ed 2d 413 (1971); Rice v Sioux City Memorial Park, 349 US 70, 78, 75 S Ct 614, 99 L Ed 897 n2 (1955); Weinstein v Bradford, 423 US 147, 96 S Ct 347, 46 L Ed 2d 350 (1975).

merits of this case.

3. This Court has often recognized that federal courts are powerless to decide questions which cannot affect the rights of the litigants in the case before them. North Carolina v Rice, 404 US 244, 246, 92 S Ct 402, 30 L Ed 2d 413-415 (1971).

The exercise of this Court's judicial power under Article III of the United States Constitution depends on the existence of a case or controversy.

To be cognizable by this Court, a case "must be definite and concrete, touching the legal relations of parties having adverse legal interests....It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." Aetna Life Insurance Co v Haworth, 300 US 227, 240-241, 57 S Ct 461, 81 L Ed 617 (1937); North Carolina v Rice, *supra*, 404 US at 246; Preiser v Newkirk, 422 US 395, 401, 95 S Ct 2330, 45 L Ed 2d 272 (1975).

Mootness is a jurisdictional question because this Court is not empowered to decide moot questions or abstract propositions. North Carolina v Rice, *supra*, 246. The rule in federal cases is that an actual controversy must exist at all stages of review and that even in cases originating in state courts, a determination of mootness is fatal to the exercise of this Court's jurisdiction. DeFunis v Odegaard, 416 US 312, 316, 94 S Ct 1704, 40 L Ed 2d 164 (1974); Preiser v Newkirk, 422 US 395, 401, 95 S Ct 2330, 45 L Ed 2d 272 (1975). In order to determine whether a "live" controversy exists here, this Court must consider what the adverse interests of the parties are and what, if any, practical impact a decision on the merits of this case will have on those interests. See Socialist Labor Party v Gilligan, 406 US 583, 92 S Ct 1716, 32 L Ed 2d 317 (1972); Powell v McCormack, 395 US 486, 496, 89 S Ct 1944, 23 L Ed 2d 491, 502 (1969).

This is an extradition habeas corpus case. Mr. Doran challenged the legality of his arrest under the Michigan Governor's warrant

by exercising his statutory<sup>3</sup> right to file a habeas corpus action in a local court of record. The habeas corpus proceeding attacked the validity of the Governor's warrant upon which Mr. Doran was being held on the grounds that the warrant was issued in response to a requisition which was not visibly supported by a showing of probable cause. The Bay County Circuit Court denied the petition for habeas corpus. In reversing the Circuit Court, the Michigan Supreme Court in effect concluded that the Governor's warrant was invalid for the reason claimed, and released Mr. Doran.<sup>4</sup> Mr. Doran's interest in this case was, obviously, to avoid the effects of a wrongful extradition.

Beyond seeking a clarification from this Court of the constitutional issues surrounding extradition, the Petitioner's brief does not specify his immediate interest in the outcome of this case. Presumably, however, his ultimate aim in pursuing this appeal is reversal of the Michigan Supreme Court, vindication of the Governor's warrant and renewed power to extradite Harold Doran.

The present posture of this case is such that its adjudication by this Court, on the merits, will have no significant impact on the concrete interests of the parties. Extradition jurisdiction extends only to persons "found in" the asylum state. U.S. Constitution, Art IV § 2 cl.2; MCLA 780.2, MSA 28.1285(2) (Uniform Criminal Extradition Act.). Mr. Doran's apparent disappearance raises a strong inference that he is no longer in Michigan. If the Petitioner should prevail in this Court and consequently regain the power to extradite Mr. Doran, there will in all likelihood, be no subject matter upon which this power may be exercised. In this event, the Doran case would no

<sup>3</sup> MCLA 780.9; MSA 28.1285(9)

<sup>4</sup> Outright release of the prisoner is an unusual remedy in extradition habeas corpus appeals. The more common procedure is to afford the demanding state a few days in which to correct its defective documents. The immediate release of Mr. Doran was prompted by the Michigan Court's recognition that he had spent almost two years in the Bay County jail, being held solely for extradition upon an untried charge. People v Doran, 401 Mich 235, 250 fn 5, 258 NW2d 406 (1977). See also Pipin v Leach, 523 P2d 1191 (Colo, 1975); Kirkland v Preston, 385 F2d 670, 676 (DC App, 1967).

longer be "definite and concrete, touching the legal relations of parties having adverse legal interests" and "admitting of specific relief through a decree of a conclusive character."

This case is analogous to appeals from convictions in which the defendant has escaped. In Smith v United States, 94 US 97, 24 L Ed 32 (1876), the accused escaped from custody after suing out a writ of error from this Court to the highest state court. This Court noted that if it affirmed the conviction, the escapee was not likely to reappear, and if it reversed and ordered a new trial, he would "appear or not, as he might consider most for his interest. Under such circumstances, this Court said, "we are not inclined to hear what may prove to be only a moot case." Smith, *supra*, 94 US 97.

See also Eisler v United States, 338 US 189, 69 S Ct 1453, 93 L Ed 1897 (1949). In this case, Mr. Doran is not an escapee but a free individual who obtained relief from his lengthy detention under the Governor's warrant. Unlike an escapee, Mr. Doran could not be forcibly returned to Michigan if discovered elsewhere. His freedom renders his return far more unlikely than the reappearance of an escaped convict. An affirmance by this Court would merely continue the status quo and provide no further impetus than already exists for his return. A reversal would again subject Mr. Doran to extradition proceedings in Michigan, thus further decreasing his incentive to return.

4. Nor can Mr. Doran's absence be characterized as a "voluntary cessation of allegedly illegal conduct" which "does not deprive the tribunal of power to hear and determine the case, i.e. does not make the case moot." DeFunis v Odegaard, 416 US 312, 94 S Ct 1704, 40 L Ed 2d 164 (1974). Mr. Doran is now legally free to leave Michigan. Even if this Court were to decide this case against him, he would not then or ever be under any legal compulsion to return to the State of Michigan.

5. This case also fails to come within the "capable of repetition, yet evading review" exception to the doctrine of mootness. Sosna v Iowa, 419 US 393, 95 S Ct 553, 42 L Ed 2d 532 (1975); Weinstein v Bradford, 423 US 147, 96 S Ct 347, 46 L Ed 2d 359 (1975). There is no concrete indication that Mr. Doran is either present in Michigan or might return in future, particularly if reappearance means incurring the risk of extradition. Thus, the likelihood of Mr. Doran's emergence in Michigan is too speculative to render the facts from which this appeal arose reasonably capable of repetition. Weinstein v Bradford, *supra* 423 US 148. Although similar extradition disputes may confront Petitioner in future, it is clear that in order to invoke the "capable of repetition" doctrine, the recurring dispute must be between the present parties. Weinstein v Bradford, *supra*, 423 US 147, 148; Roe v Wade, 410 US 113, 93 S Ct 705, 35 L Ed 2d 147 (1973); Nebraska Press Association v Stuart, 427 US 539, 96 S Ct 2791, 49 L Ed 2d 683 (1976). The possibility that Petitioner and Mr. Doran will once again become embroiled in an extradition dispute is simply too remote to supply a basis for this Court's decision of the substantive issues.

The apparent and continued absence of a Respondent whose concrete interests can be affected by an order of this Court presents "insuperable obstacles" to the exercise of this Court's jurisdiction. Rescue Army v Municipal Court, 331 US 549, 574, 67 S Ct 1409, 91 L Ed 1666 (1947). This Court should decline to hear this case rather than risk what may well prove to be a moot adjudication of the merits.

FOR THE FOREGOING REASONS, Respondent respectfully requests  
that this Honorable Court dismiss the Writ of Certiorari as im-  
providently granted.

Respectfully submitted,

STATE APPELLATE DEFENDER OFFICE

BY: Kathleen M. Cummins

KATHLEEN M. CUMMINS  
Assistant Defender  
Attorney for Respondent

Third Floor, North Tower  
1200 Sixth Avenue  
Detroit, MI 48226  
(313) 256-2814

Dated: September 8, 1978

A P P E N D I X A

A F F I D A V I T

STATE OF MICHIGAN ( )  
COUNTY OF WAYNE ( ) ss

LINDA BORUS, being first duly sworn, deposes and states:

1. She is an Investigator employed by the STATE APPELLATE DEFENDER OFFICE.

2. In May of 1978, she was assigned to investigate the whereabouts of Harold Doran, Respondent herein.

3. Since then, she has taken the following actions in an attempt to locate Mr. Doran:

a. sent a letter to his last known address, namely  
c/o William Doran, 710 So. Arbor, Bay City, Michigan;

b. Checked the visitor lists at the Bay County jail for the period of Mr. Doran's incarceration and contacted people who had visited Mr. Doran;

c. Contacted all hospitals in the Bay City area, inquiring if Mr. Doran was listed as a patient;

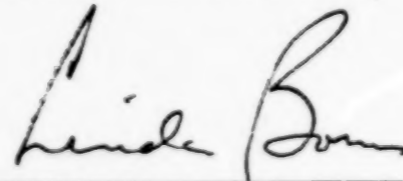
d. Contacted the Michigan Department of Health regarding the possible demise of Mr. Doran;

e. Contacted the Bay County Sheriff's Department to ascertain if they or their contacts had any current information concerning Mr. Doran;

f. Checked with the Law Enforcement Information Network for entries in any state concerning Mr. Doran more recent than his initial arrest on this matter December 18, 1975.

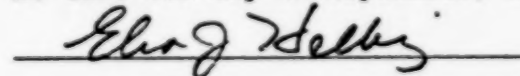
4. None of the above efforts produced any information regarding Harold Doran's current whereabouts.

Further, deponent sayeth not.



LINDA BORUS

Subscribed and sworn to before  
me this 8th day of September, 1978.



Notary Public, Wayne County, Michigan

My Commission Expires: July 30, 1980